(1992) 03 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No''s. 306, 307, 308, 648 to 651, 661 and 681 of 1992

The Licensee, Sangeeth Theatre, Vaniambadi, North Arcot, Ambedkar District and others — APPELLANT

Vs

The Appellate Authority and Joint Commissioner I, Land Administration Department, Chepauk, Madras-5, The Collector of North Arcot, Ambedkar District, Vellore and The State of Tamil Nadu — RESPONDENT

Date of Decision : 02-03-1992

Acts Referred:

Cinematograph Act, 1952 — Section 7, 8
Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 9, 9(1), 9(2), 9A, 9A(1)
Tamil Nadu Entertainments Tax Act, 1939 — Section 14, 14(1), 15

Citation : (1992) 03 MAD CK 0004

Hon'ble Judges : Nainar Sundaram, Acting C.J.;Somasundaram, J

Bench : Division Bench

Advocate : R.D. Indrasenan and K.M. Vijayan, for the Appellant; G. Rajagopalan, Special Government Pleader, for the Respondent

Judgement

Somasundaram, J.—The petitioner in these writ petitions are licensees of permanent Cinema theatres situated in various places. The

petitioner in the respective writ petitions reportedly that committed certain offences under S.14(1) of the Tamil Nadu Entertainment Tax Act, and

they have also compounded the said offence with the Commercial Tax Officers by paying the compounding fees under S. 15of the said Act. As the

petitioner in the respective Writ petitions compounded the offences punishable under S.14 (1)of the Tamil Nadu Entertainment Tax Act, the

respective Licensing Authority/Collector suspended the C-From Licences of the petitioner''s theatres for various periods in exercise of the power-

conferred by S.9 (1) of the Tamil Nadu Cinema (Regulations) Act, 1955 (hereinafter called the Act). As against the orders of the licensing

Authorities, the petitioners filed appeals before the Appellate Authority, the 1st respondent in these writ petitions under S.9-A of the Act, The

Appellate Authority in identical orders found that under S.9-A of the Act, an appeal will lie to the Appellate Authority only against the order of the

Licensing Authorities revoking or suspending the licence, under S.9(2) of the Act, in the present case, the Licensing Authorities suspended the

licences under S.9(1) of the Act, and therefore, no appeal will lie against the orders made by the Licensing Authorities under S.9(1)of the Act.

Consequently the Appellate Authority the 1st respondent in these writ petitions dismissed all the appeals filed under S.9-A of the Act holding that

they are not maintainable under the said Section. Aggrieved by the orders of the appellate authority, the present writ petitions have been filed by

the petitioners for issue of a writ of certiorari to quash the orders of the 1st respondent, dismissing the appeals filed under S.9-A of the Act as not

maintainable and the orders of the Licensing Authorities suspending the C. Form Licences of the petitioners for specified periods. Mr. R.D.

Indrasenan, Learned Counsel for the petitioners in W.P. Nos. 306 to 308, 661 and 681 of 1992 and Mr. K.M. Vijayan, Learned Counsel for the

petitioners in W.P Nos. 648 to 651 of 1992 in the first place contended that the Licensing Authorities in these cases have initiated action against

the petitioners for suspending the C. Form Licences, on a reference made to them by the Commercial Tax Officers and after issuing show-cause

notice and therefore, the orders passed by the Licensing Authorities pursuant to the reference made by the Commercial Tax Officers and after

issuing show cause notice must be considered as orders passed under S.9(2) of the Act, and such orders passed under S.9(2) of the Act are

appealable under S. 9A of the Act.

2. We are unable to appreciate and accept the above contention of the Learned Counsel for the petitioners. The Commercial Tax Officers in these

cases have only brought to the notice of the respective licensing Authorities the irregularities and offences committed by the licensees. From the

above fact, it cannot be stated that the Licensing Authorities initiated proceedings against the petitioners on a reference made by the Commercial

Tax Officers and that they passed orders in exercise of the power under S.9(2) of the Act. After all, the Licensing Authorities can initiate

proceedings even under S.9(1) of the Act only when some authority like the Commercial Tax Officer brings to their notice the irregularities and

offences committed by the Licensees of the theatres. Similarly the fact that the proceedings were initiated against the licensees of the permanent

theatres in all these cases by the Licensing Authorities by issuing show-cause notices will not by itself mak the proceedings one under S. 9(2) of the

Act, because S.2-A of the Act imposes an obligation on the part of the Licensing Authorities to issue show-cause notices to the licensees of the

theatres before taking action either under S.9(1) or under 9(2) of the Act.

3. The second contention of the Learned Counsel for the petitioners is that S.9(1) of the Act cannot be read as an independent source of power;

the power to suspend or revoke the license under the Act is always referable to S.9(2) of the Act; when the Licensing Authority decides to take

action to suspend or revoke the license, the ultimate power to revoke or ''suspend the license is referable to S.9(2) of the Act alone and therefore,

the orders passed, by the Licensing Authorities suspending the licences must be considered as one passed under S.9(2) of the Act and they are

appealable under S.9-A of the Act.

4. To appreciate the above contention of the Learned Counsel for the petitioners, it is necessary to refer to the relevant provisions of the Act.

S.9of the Act deals with the powers to revoke or suspend the licence and it runs as follows:

(1) Where the holder of a licence or any person employed by him has been convicted of an offence under Cl.(a) or sub-Cl.(1)of Cl.(b) or Cl.(c) of

Sub-S.1 of S.14of the Tamil Nadu Entertainment Tax Act 1939 (Tamil Nadu Act 10 of 1939) or has been permitted to compound such offence

under S.15of the said Act or has been convicted of an offence under S.7of the Cinematograph Act, 1952 (Central Act XXXVI of 1952), or S.8of

this Act, the licence may be revoked or suspended by the licensing authority by an order in writing.

(2) If any licensing Authority is satisfied either on a reference made to it in this behalf or otherwise, thatï¿½

(a) A licence granted under this Act has been obtained by misrepresentation or fraud as to an essential fact, or

(b) the licensee has, without reasonable cause, failed to comply with any of the provisions of this Act or of the rules made thereunder, or any of the

conditions or restrictions upon or subject to which the licence has been granted, then without prejudice to any other penalty to which the licensee

may be liable under this Act, the licensing authority may, revoke or suspend the licence.

S.9-A(1) provides for appeal against revocation or suspension of licence and it reads thus:

Any person aggrieved by the decision of the licensing Authority revoking or suspending a licence under sub-S (2) of S.9may, within such time as

may be prescribed, appeal to such authority as the Government may specify in this behalf and such authority may make such order in the case as it

may think fit.

A reading of S.9shows that sub-Ss.(1) and (2) of S.9deal with two different circumstances under which the licensing authority can revoke or

suspend the licence S.9 (1) of the Act empowers the licensing authority to revoke or suspend the licence when there has been a conviction under

the relevant provisions of the Tamil Nadu Entertainment Tax Act, 1939 or when the licensee has been permitted to compound the offence under

S.15of the said Act. S.9 (2)of the Act empowers the licensing authority to revoke or suspend the licence where the licence has been obtained by

misrepresentation or by playing fraud or when the licensee has without reasonable cause failed to comply with any of the provisions of the Act or

of the Rules made thereunder or any of the conditions or restrictions upon which the licence has been granted Thus the powers available under

sub-Ss.(1) and (2) of S.9of the Act are independent powers, which can be exercised by the licensing authority under two different circumstances

to deal with two distinct categories of cases. Therefore, there is no merit in the second contention of the Learned Counsel for the petitioners.

5. The last contention of the Learned Counsel for the petitioners is that orders of the Licensing Authority though purported to have been passed

under S.9(1) of the Act, in substance, they are orders passed under S.9(2) of the Act and therefore, they are appealable orders under S.9-A of

the Act. There is no merit in this contention of the Learned Counsel for the petitioners also. A perusal of the orders challenged in these writ petitions shows that the proceedings in each of these cases were initiated by the Licensing Authorities by issuing show cause notices under S.9

(1)of the Act. It is also not in dispute that the licensees in these cases have compounded the offences punishable under S. 14of the Tamil Nadu

Entertainment Tax Act with the Commercial Tax Authorities by paying the compounding fees. As the licensees in these cases have been permitted

to compound the offences as provided under S.15of the Tamil Nadu Entertainment Tax Act, S.9 (1) of the Act stands attracted and the licensing

Authorities rightly passed the orders suspending the C-Form Licences under S.9 (1) of the Act. An examination of the orders challenged in these

writ petitions also goes to show that the C-Form Licences in all these cases were suspended by the Licensing Authorities on the only ground that

the licensees have been permitted to compound the offences under S.15of the Tamil Nadu Entertainment Tax Act. No other ground, bringing the

cases of the petitioners under S.9 (2)of the Act is referred to and relied upon by the licensing Authorities in the orders challenged in these writ

petitions, for suspending the C-Form licences. A careful analysis of the order challenged in these writ petitions shows that the Licensing Authority

in each of these cases, while passing orders suspending the licence, has only exercised power under S.9 (1) of the Act. When that is the conclusion

we arrive at on factual analysis of the cases we have no hesitation in holding that the Licensing Authorities passed orders suspending the C-Form

Licences only under S.9(1) of the Act, and therefore they are not appealable under S.9-A of the Act. In these circumstances, the appellate

authority rightly held that no appeal lies against the orders passed by the Licensing Authorities suspending the C-Form Licences of the petitioners''

theatres under S.9 (1) of the Act. There is no infirmity in the orders challenged in these writ petitions. There is no merit in these writ petitions and

they are liable to be dismissed, and they are accordingly dismissed. No costs.